Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PATTONY INVESTMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56.

The landlord's three agents, landlord FC ("landlord"), "landlord PC" and "landlord TD" and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the manager, landlord PC was the property manager and landlord TD was the building manager and that all three had the authority to speak on behalf of the landlord company named in this application, as agents at this hearing. "Witness DG" testified on behalf of the landlord at this hearing and both parties had an opportunity to question the witness.

The hearing began at 11:00 a.m. At the beginning of the hearing, all of the above parties and the witness called into the teleconference. I informed everyone that witnesses could not participate in the entire hearing, only when it was their turn to testify. I notified them that only parties could participate in the entire hearing process and hear all the testimony. I asked landlord PC and witness DG if they were witnesses and both confirmed that they were witnesses for the landlord. I took the contact information of both and they exited the call at 11:08 a.m. However, only the tenant remained in the teleconference when the above two people exited the call. No one was present for the landlord.

After waiting unsuccessfully for the landlord to call back in, I asked the telephone operator to call the landlord's phone number listed on the landlord's application at 11:12 a.m. When I did not hear back from the telephone operator or the landlord, I called the landlord's listed number from a different secure telephone line, spoke with the landlord at 11:30 a.m. and asked her to call back into the conference using the same phone

number and call-in codes on her notice of hearing sheet, because I was unable to connect her from the separate line that I was calling her from. The landlord then called back into the teleconference at 11:32 a.m.

When I asked the landlord why she exited the call in the first place when she was representing the landlord, she said that I had asked landlord PC to exit the call and she was on the same telephone line, which I was unaware of because the landlord did not tell me at that time. When I asked the landlord why she did not call back into the conference, since there was no one on participating from the landlord's side, she said that she was waiting for my call. When I asked her why she did not answer the telephone operator's phone call, she said that the operator hung up on her when she answered the phone. She then told me that landlord PC was not a witness, but a representative of the landlord company. Accordingly, I continued the conference at 11:32 a.m. and advised the landlord that I did not hear evidence from the tenant in her absence. The hearing ended at approximately 12:25 p.m.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's written evidence package.

The tenant said that he did not receive a one-page letter, dated October 25, 2016, from the landlord. The landlord said that she did not serve this letter to the tenant as part of the landlord's written evidence. Accordingly, I advised the landlord that I could not consider this letter at the hearing or in my decision because it was not served to the tenant as required by Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Issue to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy began on September 1, 2001 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. The tenant said that monthly rent in the amount of $1,025.00 is payable on the first day of each month, while the landlord said that the rent was increased in March 2016, by $25.00 each month for a

total of $1,050.00 per month. Both parties agreed that a security deposit of $370.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord said that she is seeking an early end to tenancy because she has to do repairs and renovations in the rental unit. Both parties agreed that a fire occurred on March 29, 2016, in the rental building in one of the units on the same floor and down the hall from the tenant's rental unit. The landlord said that the tenant refuses to move his belongings from the rental unit in order for repairs and renovations to be completed. She said that the City delayed granting a building permit for repairs in the tenant's rental unit and that the repairs will not start for a number of months so it is better for the tenant to find a new place. She said that only some repairs and renovations have been done to other units, allowing other tenants to move back in to their units. Both parties provided photographs of the tenant's rental unit as well as the hallways and other parts of the rental building affected by the fire and repairs.

Witness GF testified that he is the project manager hired by the building insurer in order to oversee the repairs and renovations to the rental building after the fire. He said that the fire affected the structure of the apartment building, the project is expensive and affected many other rental units besides the tenant's unit. He maintained that the tenant's rental unit had a "no occupancy" order as of March 29, 2016. He said that repairs of some units as well as common hallways for emergency egress were done, which did not require City permits. He said that the tenant's rental unit is part of the final phase of repairs, that the drywall has to be replaced next door to the tenant's unit, and that the electrical wiring may need to be stripped out next door as well. Witness DG stated that the tenant's rental unit will need new flooring and paint, and likely electrical work as well. He said that the work cannot be done with the tenant's belongings still in the unit, which the tenant refuses to remove. He maintained that the City permits took a long time to obtain, but it was outside the landlord's control; the tenant questioned this lengthy delay.

The tenant said that he had to move out of his rental unit on March 29, 2016, due to the fire. He said that he stayed in a hotel for three days which was paid for him, and since then, he has been living in different places and paying his own costs. He claimed that he did not open his door in order to let more smoke in during the fire. He said that he checked his unit after the fire and everything was fine. He agreed that he did not remove his belongings from the rental unit because he said it was not required and his unit does not need any repairs or renovations. He explained that witness DG keeps "changing his story" and does not really know what is happening because he is hardly in the rental building, since he is acting supervisor and does mainly paperwork. The tenant stated that a lot of repair work was done in the rental building without City

permits, like in the hallways, and some people moved back into their units. He said that the landlord is delaying this process. He alleged that the landlord wants to do renovations to the carpet and paint in order to re-rent his unit for double the rent, to new tenants. He maintained that he has lived in this unit for 15 years and it is his home.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties and witness DG, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2)(a) **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

> *(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:*
> *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
> *(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
> *(iii) put the landlord's property at significant risk;*
> *(iv) engaged in illegal activity that*
> *(A) has caused or is likely to cause damage to the landlord's property,*
> *(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
> *(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
> *(v) caused extraordinary damage to the residential property…*

The landlord did not specifically state which of the above section(s) she was applying for and which section(s) the tenant violated.

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I am not satisfied that the landlord has met its onus to end this tenancy early and that it would be "unreasonable" or "unfair," as per section 56(2)(b) of the *Act*, for the landlord to wait for a 1 Month Notice to take effect.

I find that the landlord's reason that it is "better for the tenant to find alternative accommodations" because she does not know when the repairs and renovations will be finished in his rental unit, is not a sufficient or urgent reason to end the tenancy early. The landlord waited almost 10 months before filing her application, from the date of the fire on March 29, 2016 until the application was filed on January 5, 2017. If this was a matter of urgency and the tenant was impeding repair or renovation efforts or jeopardizing the landlord's property by failing to remove his belongings, presumably the landlord would have filed its application earlier. The landlord did not provide a copy of a 1 Month Notice issued to the tenant for any of the above reasons. I am not satisfied that the landlord's complaints, as noted above, are of an urgent nature that the tenancy must end earlier than the 30 days for a 1 Month Notice.

For the reasons outlined above, I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession to the landlord.

Conclusion

The landlord's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 31, 2017

Residential Tenancy Branch